

From: [Bailey, Clayton L. \(CIV\)](#)
To: [Ethan Szumanski](#); [Gaffney, Michael J. \(CIV\)](#)
Cc: mmiller@texaspolicy.com; [Ryan Walters](#)
Subject: RE: 5:23-cv-34 - Texas v. Garland - Potential Witnesses
Date: Tuesday, November 14, 2023 5:13:18 PM
Attachments: [image001.png](#)

Hi Ethan,

Thanks for talking earlier. We appreciate your desire to avoid live witnesses. If the court were holding a hearing on Texas's PI motion and Defendants' motion to dismiss, we would not expect either party to put on live witnesses, which is what we all told the court at the status conference prior to the then-scheduled motions hearing.

In this context, however, where the court has *sua sponte* consolidated the motions hearing with a trial on the merits, Defendants are not willing to withdraw our objections to Texas's declarations. From our earlier conversation, we understand that you are therefore likely to list your declarants as potential witnesses and that you may call them at trial in the event that the court grants Defendants' motion.

On the call, we proposed two possible paths forward. First, the parties could request that the court hold, as originally planned, a motions hearing on November 28, which would almost certainly obviate the need for live witnesses. Second, the parties could request that the court keep in place all pre-trial deadlines, including the final pre-trial conference on November 28, but continue the trial date by up to two weeks. A short one- to two-week continuance would allow the parties to take short trial depositions of any individuals listed on the parties' respective witness lists and prepare for examination of the witnesses at trial. In the event that the court admits the declarations, live witness will not be necessary at trial and the trial will only have been delayed by one to two weeks. But, in the event the court excludes the declarations, the parties would have had the opportunity to adequately prepare for witness testimony at trial.

Please confirm that Texas remains opposed to these options. If the parties are not in agreement and therefore cannot file a joint motion, Defendants intend to file their own motion. To the extent you oppose either or both approaches set forth above, we will note your opposition in our filing.

Best,
Clayton

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Tuesday, November 14, 2023 5:52 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>; Bailey, Clayton L. (CIV) <Clayton.L.Bailey@usdoj.gov>
Cc: mmiller@texaspolicy.com; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: 5:23-cv-34 - Texas v. Garland - Potential Witnesses

Mike,

We have not heard from you yet this afternoon, so we just wanted to follow up

EXHIBIT

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with you to see if you had discussed our proposal any further among yourselves?

Best,



Ethan Szumanski
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ethan.szumanski@oag.texas.gov

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From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Tuesday, November 14, 2023 12:29 PM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Subject: RE: 5:23-cv-34 - Texas v. Garland - Potential Witnesses

Perfect. Thanks. Talk to you soon.

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Tuesday, November 14, 2023 1:29 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Subject: [EXTERNAL] RE: 5:23-cv-34 - Texas v. Garland - Potential Witnesses

Absolutely. Here is the conference line we can use: 512-882-6743 (no PIN).

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Tuesday, November 14, 2023 12:23 PM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Subject: RE: 5:23-cv-34 - Texas v. Garland - Potential Witnesses

Yes – how about 2pm EST/1pm CST? Clayton may want to join so let's use a conference line, if you wouldn't mind circulating again.

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Tuesday, November 14, 2023 12:56 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Subject: [EXTERNAL] 5:23-cv-34 - Texas v. Garland - Potential Witnesses

Mike,

Given that our deadline to file a witness list is today, would you be available for a phone call today to discuss the need for potential witnesses?

Best,



Ethan Szumanski

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